

REMARKS

This is in response to the Office Action mailed January 29, 2009 in which claims 1, 2, 4-5, 7, 9-10, 12-14, 16-19, 23, and 25-27 were rejected. Claims 16, 23, 25, and 27 are amended herein. All amendments are fully supported by the original application and drawings. No new matter is added. Claims 1, 2, 4-5, 7, 9-10, 12-14, 16-19, 23, and 25-29 are pending in this application. Claims 28-29 are withdrawn from consideration. In view of the foregoing amendments and following remarks, Applicants respectfully request advancement of this application to allowance.

Rejections Under 35 U.S.C. § 112

Claims 16-17 and 25-27 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants thank the Examiner for his careful review of the claims.

Claim 16 is amended herein to depend from claim 14. Claim 14 provides antecedent basis for "the second one" recited in claim 16. Claims 23, 25, and 27 are also amended to properly depend from the method of claim 19.

Claims 16-17 and 25-27 are now clear and definite. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 16-17 and 25-27.

General Comments

A goal of the present invention is to provide a humane alternative to known traps and snares. There is also a need to reduce the time taken by a trapper to constantly monitor and reset a trap, as well as providing the public with an extermination apparatus that avoids having to remove injured, diseased and aggressive animals from the apparatus.

As disclosed in the specification, the invention provides an extermination apparatus. This apparatus is baited and a trigger mechanism is set at the mouth. When an animal enters the trap to reach the bait, the animal springs the trigger mechanism which releases a ring around the animal's neck. The ring continues to constrict around the animal's neck resulting in the death of the animal.

The apparatus of the present invention is configured so that the constricting device or ring is completely free of the extermination device when the constricting device is released by

the trigger mechanism and snapped around an animal's neck. For example, claim 1 recites: "... wherein the extermination device is configured to release the resilient ring free of the extermination device."

Therefore, once the animal's neck is ensnared by the ring, the animal is free to leave the extermination apparatus, before dying unattached to the apparatus. Because the ring, when contracted, has a circumference that is less than the size of an animal's neck, the resilient ring will continue to cut off the blood and air supply to the animal even when the animal has left the vicinity of the extermination device. Further, the employment of the humane yet lethal ring replaces the inhumane and inefficient wire and jaw devices of the past, allowing for clean, cost-effective and humane extermination.

Rejections Under 35 U.S.C. § 102

Claims 1-2, 4, 7, 10, 18, and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Popp (U.S. 2,247,066). Applicants respectfully traverse the rejection because Popp fails to disclose each element of independent claims 1 and 19.

Claim 1 is directed to an extermination device. The extermination device comprises "a holder and a trigger mechanism, the holder being configured to hold an expanded resilient ring, wherein the extermination device is configured to release the resilient ring free of the extermination device such that it contracts around a pest when the trigger mechanism is actuated by the pest, thereby exterminating the pest."

I. The Resilient Ring is Released Free of the Extermination Device

Popp fails to disclose an extermination device that is "configured to release the resilient ring free of the extermination device," as recited in claim 1, and "releasing the resilient ring free of the holder," as recited in claim 19.

Popp describes a trap including a noose 11, such as shown in FIG. 1. The noose is preferably made of wire. (Col. 2, line 20.) The noose is formed of a flexible material and extends around inside of a helical tension spring 12. (Col. 1, lines 48-53.) One end 13 of the wire forms an eye and another portion of the wire can slide through the eye, such as can be seen

in FIG. 1. (Col. 2, lines 30-33.) The end 14 of the wire is adapted to be secured to some suitable fixed object, such as a stake 15 driven into the ground. Col. 2, lines 33-38.

Accordingly, Popp fails to disclose this element.

II. The Extermination Device is Configured to Exterminate A Pest

Popp fails to disclose an extermination device that is, “configured to release the resilient ring free of the extermination device such that it contracts around a pest when the trigger mechanism is actuated by the pest, thereby exterminating the pest,” as recited in claim 1. Independent claim 19 similarly recites a method of exterminating a pest.

Rather, Popp describes a trap “preferably for catching the smaller varieties of fur bearing animals alive for breeding purposes.” (Page 1, col. 1, lines 1-4.) Popp further explains that the size of the noose can be selected to “securely hold the animal without injuring it” and “use with the trap a spring which will contract the noose to that size and prevent it from being contracted further by the effort of the effort of the animal to escape.” (Page 2, col. 2, lines 55-63, emphasis added). Similarly, Popp describes the use of smaller springs to “hold the animal more securely and lessen the possibility of escape.” (Page 2, col. 2, lines 66-70.)

Although Popp includes the statement that “the trap may be constructed in any size and be used for catching any size of animals and may be adjusted so as to not catch the animal alive,” there is no disclosure or suggestion in Popp as to how such an adjustment would be made. Rather, Popp goes on to describe a trap that is designed not to cause injury to an animal.

Accordingly, Popp fails to disclose all elements of independent claims 1 and 19.

III. Summary and Dependent Claims

As discussed above, Popp fails to disclose all elements of claims 1 and 19. Further, it would not have been obvious to modify Popp to include these deficiencies because there is no teaching or suggestion to do so. Accordingly, Applicants respectfully request reconsideration and allowance of claims 1 and 19, as well as dependent claims 2, 4, 7, 10, and 18 that ultimately depend from claim 1. Applicants do not otherwise concede the correctness of the rejection.

Rejections Under 35 U.S.C. § 103

I. Claims 9, 12-14, 16-17, and 25-27

Claims 9, 12-14, 16-17, and 25-27 are rejected under 35 U.S.C. § 103(a) as being obvious over Popp (U.S. 2,247,066). Applicants respectfully traverse the rejection.

A. Claim 9

Claim 9 recites an “extermination device as claimed in claim 1, wherein the resilient ring is made from natural or synthetic rubber.”

The Office Action finds that Popp discloses a ring made from piano wire and that it would have been obvious to employ a natural or synthetic rubber since the selection of a known material is based on its suitability for the intended use. Applicants respectfully disagree. Not only does Popp fail to disclose the use of rubber, Popp teaches away from such a modification.

Initially, on page 3 (in reference to claim 10) the Office Action notes that “the resilient ring is made from piano wire and a spring.” In this rejection, the Office Action states that it would have been obvious to modify Popp to replace the piano wire with rubber.

Popp describes in page 1, col. 2, lines 1-35 the reasons that he selected piano wire, and also reasons why other materials have been found to be unsuitable for the noose. For example, Popp explains that the material should not contract. “[O]rdinary types of chain are unsuitable for the noose, as . . . the chain itself contracts in length . . . instead of sliding around inside of the spring 12 as the spring contracts.” (Page 1, col. 2, lines 3-10.) Thus, Popp teaches away from the use of a material that contracts in length and would not slide around inside of the spring, such as rubber.

Similarly, Popp teaches that the material should not be too flexible. “The noose is preferably made of wire composed either of a single strong and resilient strand, such as piano wire or the like, or else of a wire composed of a small number of strands so that it will not be too flexible.” (Page 1, col. 2, lines 20-24.) The material should be sufficiently stiff to allow excess wire to be forced out of the noose through eye 13 on the end of the wire. (Page 1, col. 2, lines 30-33.) Thus, Popp again teaches away from the use of a flexible material that lacks stiffness, such as rubber.

In view of the foregoing, Popp teaches away from a modification of a piano wire with rubber, and it would not have been obvious in view of Popp to make such a modification. In addition, claim 9 depends from claim 1, which is allowable for the reasons noted above. Accordingly, Applicants respectfully request reconsideration and allowance of claim 9. Applicants do not otherwise concede the correctness of the rejection.

B. Claims 14 and 16-17

Claim 14 is directed to the extermination device as claimed in claim 1, wherein the holder is configured to hold a plurality of expanded resilient rings and to hold a first one of the expanded resilient rings at a release position, and the extermination device is configured to release the first one of the expanded resilient rings when the trigger mechanism is actuated and to move a second one of the expanded resilient rings to the release position when the first one of the expanded resilient rings is released from the release position.

The Office Action states that Popp shows one resilient ring, but then asserts that it would have been obvious to modify Popp to include more than one ring for multiplied effect. Applicant respectfully disagrees.

There is no disclosure in Popp of a device having more than one ring, and the device in Popp is only suitable to hold a single ring. It would not have been obvious to modify Popp to hold multiple rings because such a modification would require significant design changes that are neither taught or suggested by Popp.

Moreover, claim 14 recites "the extermination device is configured to release the first one of the expanded rings . . . and to move a second one of the expanded resilient rings to the release position when the first one . . . is released."

Popp does not disclose an extermination device configured to move a second ring to a release position when the first one is released, and it would not have been obvious in view of Popp to make such a modification.

Claim 14 depends from claim 1, and is also allowable for at least the same reasons. Accordingly, Applicants respectfully request reconsideration and allowance of claim 14, as well as claims 16 and 17 that ultimately depend therefrom. Applicants do not otherwise concede the correctness of the rejection.

C. Claims 12-13 and 25-27

As discussed above, Popp fails to disclose or even suggest an extermination device that is configured to release the resilient ring free of the extermination device, as recited in claim 1. Claim 19 similarly recites "releasing the resilient ring free of the holder." In contrast, Popp discloses a noose that must be secured to a fixed object, such as a stake 15 driven into the ground. Col. 2, lines 33-38.

Furthermore, Popp teaches away from such a modification because the trap of Popp is intended to capture animals alive for breeding purposes, or alternatively for their fur. If the noose is not secured to a fixed object, the device would be inoperable for the intended purpose of capturing the animals, as the animal would be free to run away from the trap. Applicants do not otherwise concede the correctness of the rejection.

Claims 12-13 and 25-27 each depend from one of claims 1 or 19. Accordingly, Applicants respectfully request reconsideration and allowance of claims 12-13 and 25-27. Applicants do not otherwise concede the correctness of the rejection.

II. Claims 5 and 23

Claims 5 and 23 are rejected under 35 U.S.C. § 103(a) as being obvious over Popp in view of Spillet (U.S. 4,735,011). Applicants respectfully traverse the rejection.

Claim depends from claim 1 and claim 23 depends from claim 19. Accordingly, claims 5 and 23 are allowable for at least the same reasons discussed above with respect to Popp. Further, Spillet fails to overcome the deficiencies of Popp.

Accordingly, Applicants respectfully request reconsideration and allowance of claims 5 and 23.

CONCLUSION

In view of the foregoing, Applicants respectfully request a Notice of Allowance. There may be additional reasons that the pending subject matter is patentably distinct from the cited references in addition to those discussed herein. Applicants reserve the right to raise any such arguments in the future. If the Examiner believes that a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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